

BRIAN D. SHAPIRO

E-filed: November 21, 2018

Trustee in Bankruptcy
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In Re:

KENNETH RAY MCMAHAN,

Debtor(s).

Case No. 18-12586 LEB
Chapter 7

**TRUSTEE'S MOTION TO SELL NON-
EXEMPT ASSETS AT PUBLIC AUCTION
SUBJECT TO ANY AND ALL LIENS AND
ENCUMBRANCES; APPLICATION TO
EMPLOY INTERNET AUCTIONEER AND
PAY COMMISSION**

Hearing Date: December 20, 2018
Hearing Time: 11:00 a.m.

BRIAN D. SHAPIRO, Chapter 7 Trustee ("Trustee") in the above-styled Bankruptcy Case, hereby requests this Court for an Order authorizing the sale of non-exempt assets at an online public auction, employment of auctioneer and payment of commission (the "Motion"). The Motion is based upon the following points and authorities, the pleadings and proceedings herein, the Declaration of Brian D. Shapiro in Support, the Declaration of Internet Auctioneer in Support, and any oral argument this Court may permit.

/s/ Brian D. Shapiro 
BRIAN D. SHAPIRO, TRUSTEE

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of Facts

1. On May 3, 2018 the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada.

See generally, the Declaration of Brian D. Shapiro in support.

2. Brian D. Shapiro was appointed as the Chapter 7 Trustee. Id.

3. Among the non-exempt assets of the Estate is/are the following:

Property ID 060041-001006-0000A2, Location 11307-110309 NW 121ST PL with the described real property and premises situated in Canadian County, State of Oklahoma, to wit: Tract 10: a tract of land located in lots Six (6) and Seven (7) Block One (1), CONDO'S WEST AT SURREY HILLS, A REPLAT OF PART OF BLK 23 SURREY HILLS ADDITION NO 7. (the "Property"). Id.

4. In order to liquidate said asset for the benefit of creditors, it will be necessary to sell the Property. Id.

5. The Trustee is satisfied that the best and highest net recovery to the Estate will arise by selling the Property at an online auction through the employment and services of an on-line auctioneer. Id.

6. The Trustee feels that it is in the best interest of the Estate and the unsecured creditors to sell the property at auction, employ an auctioneer, and pay a commission to BKAssets.com, LLC ("BKAssets"). Id.

7. Movant desires to employ BKAssets as an on-line auctioneer who has a blanket bond in the aggregate amount of \$100,000.00 issued by Argonaut Insurance Company. Said auctioneer is to conduct the sale of the assets in exchange for a commission not to

1 exceed 10% of the gross receipts of the sale. Expenses are estimated not to exceed
 2 \$325.00 for costs in obtaining certified copies of the original deed, limited title reports,
 3 release of note and deed of trust, other recorded documents, listing fee, final value fee,
 4 and shipping costs. BKAssets charges a \$275.00 buyer's fee to close the sale, which will
 5 be added to the customer's bill as a service charge at the end of the auction. Id. A copy
 6 of the Auctioneer's Proposal of Asset Liquidation is attached to the Trustee's Declaration
 7 in Support as EXHIBIT 1.
 8

9 8. The Trustee will file a Report of Sale with this Court after the auction. No further
 10 confirmation of sale will be sought. Id.
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12 **II. Legal Argument**

13 **A. Motion to Sell Asset**

14 This Motion is brought pursuant to 11 U.S.C. §363, which provides:

15 (b)(1) The trustee after notice and a hearing, may use, sell, or lease,
 16 other than in the ordinary course of business, property of the estate.

17 (f) The trustee may sell property under Section (b) or (c) of this
 18 Section free and clear of any interest in such property of an entity
 other than the estate, only if -

19 (3) Such interest is a lien and the price at which such
 20 property is to be sold is greater than the aggregate value of
 21 all liens on such property;

22 It is the Trustee's belief that the proposed sale is in the best interest of the Estate and the
 23 proposed public auction via the Internet is fair and reasonable and affords the Estate the best
 24 opportunity to maximize the value of this type of property which is generally difficult for a
 25 bankruptcy trustee to sell.
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Terms and Conditions of Internet Sale:

Start Date: The auction sale will begin on the Internet Auction Site five (5) business days after the Order authorizing the sale is entered.

Preview Period & Viewing: The preview period shall run up to the entry of the Order authorizing the sale of above-referenced property plus five (5) additional business days. During this time, the asset and any available due diligence information will be able to be viewed on www.bkassets.com. The notice of the Internet Auction Sale will be available on www.bkassets.com to download and review.

Sale Period: The actual Internet auction sale will be held on the Internet Venue chosen by BKAssets. The sale period will be ten (10) days. Links will be provided at www.bkassets.com and the Internet Auction Venue in order for bidders to participate in the Internet bidding process.

Reserve or Minimum Price: Using his business judgment, the Trustee has set a reserve (minimum price) before the auction can be closed in the amount of \$7,000.00, reserving the right to rerun the auction with a lower minimum if the item does not sell initially. In the event that the reserve is not met, BKAssets will not close the sale with any potential bidder. BKAssets will report to the Trustee the result of any bids received and recommend to the Trustee a revised reserve bid or another method of sale or abandonment.

Closing Procedure: The highest final bid received (assuming the reserve bid is met) at the closing of the bidding on the Internet Auction Venue will be considered the final bid accepted by BKAssets. BKAssets will proceed to close the sale with the final bidder. The highest bidder will be required to send BKAssets certified funds within 7 days of the close of auction. Within 21 days of receiving certified funds, BKAssets will provide the highest bidder with a **Trustee's Deed**. After closing the sale, BKAssets will provide a report of sale to the Trustee indicating the results of the sale. This report will be filed with the Court by the Trustee.

If the highest bidder for some reason does not close, BKAssets reserves the right to proceed to the next highest bid received and close with that bidder. The report filed by BKAssets would reflect such an event.

1 **Warranties Implied or Stated:** The property will be sold as is, where is, with
2 no warranties implied or stated, subject to any existing liens and encumbrances known
3 or unknown by the Trustee (see liens and encumbrances for known amounts). **Buyer**
4 **pays all costs to transfer title.**

5 **Liens & Encumbrances:** Total past due taxes are \$0.00 as of 10/25/2018.
6 Pursuant to the Debtor's schedules, there is a first deed of trust held by Freedom
7 Mortgage Corporation in the amount of \$263,418.00.

8 **Debtor(s) Exemptions:** None known by the trustee at this time.

9 **Due Diligence Information:** The Property to be sold is referenced above. The
10 Trustee has made available all due diligence information that he has received relating
11 to the Property to BKAssets. In addition, BKAssets has and will obtain as much
12 information as possible regarding this asset. All due diligence information will be
13 posted on www.bkassets.com and the Internet Auction Venue. That due diligence
14 information will be available to all potential purchasers to view and/or download.

15 **Disclosures:** BKAssets will disclose to all potential bidders on
16 www.bkassets.com and the Internet Auction Venue that these sales are subject to a
17 Bankruptcy Court Proceeding. The bankruptcy case number and case name will be
18 provided as well as BKAssets' name, address, phone and fax number information. All
19 sales will be subject to the terms and conditions set forth in this application as directed
20 by the Trustee.

21 **Information regarding Internet Auctioneer & Internet Venue Provider:**
22 The BKAssets's website specializes in the sale of bankruptcy estate assets. The
23 www.bkassets.com provides an automated auction venue operated by computer under
24 the Trustee's direction. It is like a traditional auctioneer in the sense that BKAssets is
25 responsible for obtaining information regarding the asset posted for sale, answering the
26 numerous inquiries received via the Internet and closing of the sale which entails
27 obtaining good funds from the buyer and providing title (and/or goods) as outlined in
28 the sale to the sellers. BKAssets uses an internet auction venue to obtain the bids from
the public. The internet auction venue does not handle any funds of the estate and/or
assets. The Internet Auction Venue charges an advertising fee to BKAssets for the
listing of the bankruptcy property. This advertising fee is an expense to be reimbursed

1 to BKAssets along with its 10% commission based upon the highest and best bid
 2 received from the Internet. BKAssets will collect a transfer fee and shipping costs from
 3 the buyer to offset the potential expenses paid by the estate to BKAssets.

4 To participate in the auction, a party should first go the www.bkassets.com
 5 website to view the assets being held pending a sale date (waiting for bar date notice to
 6 pass on the Notice of Internet Auction Sale). Once the bar date has passed plus
 7 approximately five (5) business days, the Internet auction sale will begin on an Internet
 8 Auction Venue. Potential purchasers may obtain the location of the internet online
 9 bidding link through www.bkassets.com. The sale information will also be available on
 10 the Internet Auction Venue in the applicable categories. It is strongly suggested that
 11 potential bidders would find the sale easier using the BKAssets website.

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 13 **B. Motion to Employ Auctioneer and Pay Commission**

14 This Motion is brought pursuant to 11 U.S.C. §327, which provides:

15 (a) Except as otherwise provided in this section, the trustee, with the
 16 court's approval, may employ one or more attorneys, accountants,
 17 appraisers, auctioneers, or other professional persons, that do not
 18 hold or represent an interest adverse to the estate, and that are
 19 disinterested persons, to represent or assist the trustee in carrying
 20 out the trustee's duties under this title.

21 The services of an auctioneer are, in the opinion of the Trustee, necessary to enable the
 22 Trustee to faithfully execute his duties. The Trustee believes that BKAssets based upon its
 23 declaration in support, represents no interest adverse to the Estate and that BKAssets is, therefore,
 24 a disinterested party within the meaning of 11 U.S.C. §101. The Trustee further requests the
 25 Court's authorization to pay BKAssets a commission not to exceed to 10% of the final sale
 26 proceeds in addition to costs not to exceed \$325.00.

27 The Trustee is informed and believes that BKAssets is aware of the provisions of 11
 28 U.S.C. §328 and has agreed, notwithstanding the terms of conditions of employment herein set

1 forth, that the Court may allow compensation different from the compensation provided herein if
2 such terms and conditions prove to have been improvident in light of developments unanticipated
3 at the time of fixing such terms and conditions.

4 **III. Conclusion**

5 WHEREFORE, the Trustee respectfully requests an Order authorizing the sale of the
6 Property by online auction, to employ BKAssets.com, LLC as auctioneer, and to pay a
7 commission not to exceed 10% of the gross receipts of the sale in addition to costs not to exceed
8 \$325.00.
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10 DATED: November 16, 2018.

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12 BRIAN D. SHAPIRO, TRUSTEE
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